

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 16 1994

In the Matter of:

Implementation of Sections 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile
Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

GEN Docket No. 93-252

OPPOSITION OF
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") respectfully submits its Opposition to certain Petitions for Reconsideration of the Second Report and Order in the above-captioned proceeding.¹ Specifically, PCIA opposes the requests of NARUC, the Pennsylvania PUC, and the New York Department of Public Service for reconsideration of the Commission's holdings regarding jurisdiction over intrastate CMRS interconnection rates and policies governing petitions to continue or initiate state regulation.

In the Second Report and Order, the Commission held that, if it decides to require CMRS providers to interconnect with other CMRS providers, states will be preempted from regulating CMRS interconnection rates.² In addition, the Commission directed that any state seeking to continue or initiate regulation over CMRS rates must "identify and

¹ 9 FCC Rcd 1411 (1994). Notice of these petitions was given at 59 Fed. Reg. 28386 (June 1, 1994). No. of Copies rec'd 20

² Id. at 1500 (¶ 237).

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provide a detailed description of the specific existing or proposed rules that it would establish if we were to grant its petition."³ The Commission also explained that if a state can demonstrate that CMRS services are a substitute for telephone service for a substantial number of subscribers in a state, it must also show that market conditions will not assure just and reasonable rates in order to obtain regulatory authority.⁴ Finally, the Commission provided that parties must wait at least 18 months after the Commission approves a state regulation before filing petitions seeking to suspend that regulation.⁵

The state petitioners challenge each of these holdings. As discussed below, none of their reconsideration requests has merit.

First, NARUC and the New York DPS assert that under Section 2(b) of the Act and related precedent, the Commission cannot preempt state jurisdiction over CMRS-to-CMRS interconnection rates.⁶ This claim is inconsistent with the plain language of Section 332(c)(3), which states that "[n]otwithstanding Sections 2(b) and 221(b), no State or local government shall have any authority to regulate ... the

³ Id. at 1505 (¶ 252).

⁴ Id. at 1505 (¶ 253).

⁵ Id. at 1506 (¶ 254).

⁶ See Petition of NARUC at 7-8; Petition of New York DPS at 1-3.

rates charged by any commercial mobile service"⁷ The Commission thus has properly held that state regulation of CMRS-to-CMRS interconnection rates is preempted by Section 332, and petitioners' references to other statutory provisions and prior case law are unavailing.⁸

Second, NARUC and the Pennsylvania PUC assert that the Commission's requirement that states provide a description of existing or proposed rules is overly burdensome and contrary to the requirements of Section 332.⁹ The requirement is necessary, however, to assure that any state regulation is narrowly tailored to fit an identified market failure and provides fair notice to interested parties. Moreover, it advances the statutory directive that the Commission approve only such state regulation "as the Commission deems necessary

⁷ 47 U.S.C. § 332(c)(3)(A). As the Commission properly concluded:

Congress, by adopting Section 332(c)(3)(A) of the Act, intended generally to preempt state and local rate and entry regulation of all commercial mobile radio services to ensure that similar services are accorded similar regulatory treatment and to avoid undue regulatory burdens, consistent with the public interest.

⁹ FCC Rcd at 1504 (¶ 250).

⁸ As the Commission explained in the Second Report and Order, "the standards for preemption established in *Louisiana PSC* do not apply to the rules adopted today." *Id.* at 1506 (¶ 256).

⁹ Petition of NARUC at 3-5; Petition of Pennsylvania PUC at 3.

to ensure that such rates are just and reasonable"¹⁰ It is certainly reasonable to require a state specifically to disclose what regulation it considers appropriate, so that the Commission can make an informed judgment regarding its necessity.¹¹

Third, the Pennsylvania PUC disputes the Commission's holding that a state seeking to regulate CMRS services that are substantial substitutes for landline telephone service must also demonstrate that regulation is necessary to protect ratepayers.¹² This challenge once again is belied by the language of the statute, which provides that a state must demonstrate both that the service is a substitute and that market conditions support regulation. In addition, the legislative history explicitly cautions that without a market failure, mere substitutability is not sufficient to confer state jurisdiction:

the Conferees intend that the Commission should permit States to regulate radio service provided for basic

¹⁰ 47 U.S.C. § 332(c)(3)(B).

¹¹ In any event, the disclosure requirement is not nearly so burdensome as petitioners claim. For petitions to continue existing regulation, the state need only supply a copy of its current rules. Similarly, petitions to initiate regulation of new CMRS services may be based on existing regulations. It is only if the state seeks to establish an entirely new regulatory structure that it would need to prepare proposed rules -- and in that case, it is not unreasonable to expect the state to have given the matter sufficient thought that such proposals would be relatively easy to develop.

¹² Petition of Pennsylvania PUC at 3.

telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services
....¹³

Finally, the Pennsylvania PUC asks the Commission to reconsider the 18 month waiting period for filing petitions to suspend state regulation, and instead to require petitioners to wait the greater of 18 months or the period of time for which state regulation is authorized.¹⁴ PCIA opposes this request because of the rapid pace of change in the CMRS industry. When the Commission authorizes state regulation for a certain period, it cannot possibly anticipate all the technical and competitive developments that will occur during that period. Given rapidly advancing technology and the imminent advent of six new mobile service providers in each area, the 18-month period is needed as a safety valve if developments warrant suspension of state regulation earlier than initially authorized by the Commission.

¹³ Conference Report at 25.

¹⁴ Petition of Pennsylvania PUC at 4.

For the foregoing reasons, PCIA urges the Commission to deny the reconsideration requests of NARUC, the New York DPS, and the Pennsylvania PUC in their entirety.

Respectfully submitted,

PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By:



Mark Golden
Acting President
Personal Communications
Industry Association
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 467-4770

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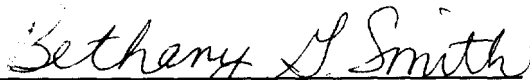
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 1994, I caused copies of the foregoing "Opposition of Personal Communications Industry Association" to be mailed via first-class postage prepaid mail to the following:

William J. Cowan
General Counsel
New York State Department of
Public Service
Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Maureen A. Scott
Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
NARUC
1102 ICC Building
P.O. Box 684
Washington, D.C. 20044


Bethany G. Smith